

VEECH, Richard L.  
Appl. No. 10/763,393  
December 3, 2007

### **REMARKS**

Reconsideration of this application is requested. Claims 32-33 are in the case.

#### **I. PRIORITY**

The Action asserts that Applicant has not complied with one or more conditions for receiving the benefit an earlier filing date under 35 U.S.C. §120/365 and 119(e) as set forth in the paragraphs extending from pages 2-5 of the Action. The following comments are offered.

The specification has been amended to update the cross-reference to earlier-filed related applications. In addition, an Application Data Sheet is submitted herewith for entry into this case.

In summary, the present application is a continuation of Application Serial No. 10/408,667, filed April 8, 2003 (Attorney Docket 604-684), abandoned, which is a continuation of Application Serial No. 10/153,873, filed May 24, 2002 (Attorney Docket 604-641), abandoned, which is a continuation of Application Serial No. 08/843,694, filed April 30, 2001 (Attorney Docket 604-591), abandoned, which is a continuation of Application Serial No. 08/397,100, filed September 16, 1999 (Attorney Docket 604-514), now U.S. Patent 6,323,237, which is a continuation of PCT International Application No. PCT/US98/05072, filed March 17, 1998 (Attorney Docket 604-438), which claimed priority from Provisional Application Serial No. 60/040,858, filed March 17, 1997. All continuation cases were filed prior to abandonment or issuance of the parent case. Based on the above, the claimed invention of the present application is entitled to benefit of the subject matter disclosed in Provisional Application Serial No. 60/040,858, filed March 17, 1997.

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As the executed Declaration which accompanied this application contained a reference with the underlying PCT International Application, PCT/US98/05072 and also to the provisional application No. 60/040,858, filed March 17, 1997, it is believed that a Petition and surcharge are not required in this application. Entry of the amendment to the specification and the Application Data Sheet submitted herewith are accordingly respectfully requested.

## **II. CLAIM OBJECTIONS**

Claims 32 and 33 have been objected to for the reasons set forth in the first paragraph on page 6 of the Action. In response, the claims have been amended to correct misspellings and other informalities. Withdrawal of the claim objections is now respectfully requested.

## **III. THE 35 U.S.C. §112, SECOND PARAGRAPH, REJECTION**

Claims 32 and 33 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite in view of use of connecting term "such as". In response, the wording "such as to elevate" has been replaced by "thereby elevating". Withdrawal of the 35 U.S.C. §112, second paragraph, rejection is now respectfully requested.

## **IV. THE ANTICIPATION REJECTIONS**

Claims 32 and 33 stand rejected under 35 U.S.C. §102(a) and (e) as allegedly anticipated by U.S. Patent 6,380, 244 to Martin et al. Claims 32 and 33 also stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent 6,207,856 to Veech. Those rejections are respectfully traversed.

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The subject matter of claims 32 and 33 finds support both in Provisional Application Serial No. 60/040,858 and International Application Serial No. PCT/US98/05072. Basis appears in the provisional application as set forth below.

Page 6, lines 1 to 5 discloses that:

**'changes in memory function in the normal aged** are also accompanied by a decreased glucose tolerance signifying an inability to metabolize glucose'.

Page 11, lines 19 to 24 discloses that:

**'Either oral or parenteral administration of free fatty acids or triglycerides** can increase blood ketones..... Substitution of lard for corn oil raised blood ketones to almost 5mM (Veech unpublished).'

Page 13, lines 1 to 3 discloses that:

**'In general the levels of ketone bodies achieved on (...ketogenic lipid diet...)** are about 2mM D- $\beta$ -hydroxybutyrate and 1mM acetoacetate while the levels of free fatty acids about 1mM'

Which should be read in conjunction with page 24, lines 1 to 2:

**'...it will be appropriate to prevent development of memory loss and/or other neurological dysfunction by elevation of the total sum of the concentrations of the ketone bodies D- $\beta$ -hydroxybutyrate and 1mM acetoacetate in the patients blood or plasma to between 1.5 and 10mM'.**

Page 24, lines 12 to 16 discloses that:

**'A still further aspect of the invention provides the ketone bodies of the invention by suitable control of diet. Thus this aspect provides a method of treatment of a human or animal for a disorder of one or more of the ninth or twelfth aspects of the invention comprising one of (i) total fasting of the individual and (ii) feeding the individual a ketogenic diet eg. of 60-80% lipid with carbohydrate content 20% or less by weight'.**

Claim 23 claims:

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'A method.... Wherein the ketones, acids or diols are provided by control of diet causing metabolic elevation of these compounds.'

Based on the above, it is clear that the subject matter of the present application is not anticipated by any of the cited references. Reconsideration and withdrawal of the outstanding anticipation rejections are accordingly respectfully requested.

**V. DOUBLE PATENTING**

Claims 32 and 33 stand rejected on obviousness-type double patenting grounds as allegedly unpatentable over claims 1, 2, 5-7 and 19 of U.S. Patent 6,323,237. In addition, claims 32 and 33 stand provisionally rejected on obviousness-type double patenting grounds as allegedly unpatentable over claims 1, 2, 5-9 of co-pending Applications Serial No. 09/843,694, 10/153,873, 10/408,667; claims 17, 33, 44 and 45 of co-pending Application Serial No. 10/559,258, and claims 1, 4, 6, 7, 8 and 11 of co-pending Applications 09/799,124, 10/394,644 and 10/734,586. In response, and without conceding to the merit of any of the double patenting rejections, attached are Terminal Disclaimers executed by the undersigned. Reconsideration and withdrawal of the outstanding obviousness-type double patenting rejections are respectfully requested.

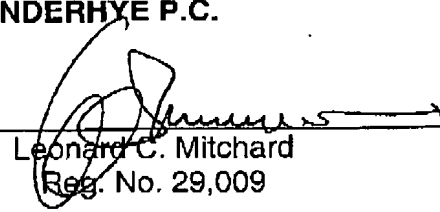
Favorable action on this application is awaited.

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Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_

  
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Attachments: Terminal Disclaimers (2) + fee; Application Data Sheet;